



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-40-347
<b>Regulation title</b>	General Conditions of Eligibility
<b>Action title</b>	Asset Verification System
<b>Final agency action date</b>	April 5, 2012
<b>Document preparation date</b>	March 29, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, §§ 32.1-324 and 325, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

The section of the State Plan for Medical Assistance that is affected by this action is Attachment 2.6-A, Supplement 16 (12 VAC 30-40-347) – Asset Verification System. This regulatory change is in response to a federal mandate that requires States to implement the use of an asset verification system to electronically verify through financial institutions (FIs) the ownership and amount of resources held by elderly or disabled Virginia Medicaid applicants or recipients.

### **Final Exempt Status**

This action is being promulgated pursuant to Code of Virginia § 2.2-4006(A)(4)(c), because these changes are "[n]ecessary to meet the requirements of federal law or regulations" and these "regulations do not differ materially from those required by federal law or regulation."

Section 7001(d) of the Supplemental Appropriations Act of 2008 added a new section 1940 to Title XIX of the Social Security Act. Section 1940(a)(1), entitled, "Asset Verification through Access to Information Held by Financial Institutions," contains the following mandate: "each State shall implement an asset verification program described in subsection (b), for purposes of determining or redetermining the eligibility of an individual for medical assistance under the State plan under this title." Pursuant to section 1940(a)(2)(B), Virginia is required to implement these asset verification programs "on or after 6 months after the deadline established for submittal of such plan amendment." The deadline for submission of asset verification program state plan amendments, set by the federal Medicaid authority (the Centers for Medicare and Medicaid Services or "CMS), is April 1, 2012. States are required to have their programs implemented by October 1, 2012. This regulatory action is intended to implement this requirement via an Asset Verification System (AVS) for the Commonwealth's Medicaid program.

Pursuant to section 1940(b) these AVS programs must contain the following elements: each Medicaid applicant or recipient must "provide authorization by such applicant or recipient" for the state to obtain "from any financial institution ... any financial record ... held by the institution with respect to the applicant or recipient ... whenever the State determines the record is needed in connection with a determination with respect to such eligibility for (or the amount or extent of) such medical assistance." The state is then authorized "to verify the financial resources of such applicant or recipient ... in order to determine or redetermine the eligibility of such applicant or recipient for medical assistance under the State plan."

CMS provided the states with a pre-printed State Plan form, with check boxes to indicate the state's compliance with the CMS Asset Verification System requirements. In the CMS pre-printed State Plan form, CMS set out the following particular requirements:

1. The AVS request and response system must be electronic.
2. The system must be secure based upon a recognized industry standard.
3. It "must establish and maintain a database of FIs that participate in the agency's AVS."
4. "Verification requests must be sent to FIs other than those identified by applicants and recipients...."
5. Verification requests must go back up to five years as determined by the state.

Section 1940(g) provides for the states to use a contractor to implement their AVS. The CMS pre-print reflects this option and it is the option chosen by DMAS. Finally, the CMS pre-print requires additional implementation information from the state, which DMAS has tied to Eligibility Modernization Project as a mandatory component of Health Care Reform.

As stated above, these regulations follow the prescribed federal pre-printed requirements from which they do not materially differ. This action is therefore in conformity with Code of Virginia § 2.2-4006(A)(4)(c) as an exempt final action.

**Substance**

The purpose of this action is to promulgate regulations to comply with Section 1940 of P.L. 110-252, which requires States to implement the use of an asset verification system to electronically verify through financial institutions the ownership and amount of resources held by elderly or disabled Virginia Medicaid applicants or recipients.

Individuals applying for medical assistance on the basis of being elderly or disabled are required to disclose and provide information regarding resources held by them and/or any other person whose resources are required as part of the eligibility determination. Currently, the process is performed manually and involves a written request for the information, submission of paper documentation by the applicant/recipient and copying and review by staff in the local department of social services.

This federally required electronic asset verification system will streamline and simplify the eligibility determination process eliminating the burden of the applicant having to provide the paper documentation of resources held in financial institutions and reducing the workload of the local department of social services staff having to handle the paper documentation. In addition to verifying the resources reported as part of the application or redetermination, use of an electronic asset verification system may also identify resources that the individual did not disclose.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

I hereby approve the foregoing Agency Background document with the attached amended State Plan pages, Attachment 2.6-A, Supplement 16 (12 VAC 30-40-347) – Asset Verification System, and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

4/5/2012

/s/ Cynthia B. Jones

Date

Cynthia B. Jones, Director

Dept. of Medical Assistance Services

## Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment.